IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11570 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDRABHAI POONAMBHAI SOMDHA PARMAR

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

1. Special Civil Application No. 11570 of 2002

MR BA VAISHNAV for Petitioner No. 1

MS MANISHA LAVKUMAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/12/2002

ORAL JUDGEMENT

Rule. Ms Manisha Lavkumar, learned AGP waives service of Rule for the respondent.

2. The petitioner belonging to a Socially and Educationally Backward Class, passed his SSC Examination

(10th Std.) in March, 1997 with 64.71% of marks. The petitioner thereafter joined the 11th Std. in Science Stream and was due to appear at the HSC Examination (12th Std.) in March, 1999. The petitioner, however, did not appear at the said examination, but in the next year i.e. in March, 2000, the petitioner appeared at the HSC (General Stream) Examination and secured 467 out of 700 marks i.e. 77.83%. The petitioner applied for admission to the PTC course well within the time limit prescribed by the Rules and the advertisement. On 24.9.1992, a public notice issued by the Director of Primary education granting admissions to the PTC course appeared in the newspapers specifying that students belonging to SEBC having obtained 77.17% in HSC (General Stream) Examination will be considered for admission. The petitioner accordingly approached the authorities, but the petitioner was informed that five marks will be deducted out of 467 and, therefore, the petitioner will be treated as having passed HSC (General Stream) Examination with 462 out of 700 marks i.e. 77% which was less than the number of marks obtained by the last candidate belonging to Baxi Panch (SEBC) who was to be granted admission looking to the number of seats available for SEBC candidates and the merit position of the candidates. The reason for such deduction of five marks was to the effect that the petitioner had passed the HSC Examination at the second attempt in March, 2000 because the petitioner had not appeared at the HSC Examination at the first attempt when the petitioner was due for the said examination in March, 1999.

3. The petitioner submitted a representation to the Director of Primary Education. A copy of the said representation is produced at Annexure "F" to the petition. Since the petitioner's grievance was not redressed, the petitioner has approached this Court for a direction to the respondent authority to admit the petitioner to the PTC course by considering the petitioner's merit position on the basis that the petitioner secured 77.83% marks in the HSC (General Stream) Examination.

4. In response to the notice issued by this Court, Mr Manisha Lavkumar, learned AGP appears and fairly states, under instructions from Mr MA Patel, Deputy Director of Primary Education, Gujarat State, that in view of the instructions dated 31.3.1990 issued by the State Government in the Education Department to the Director of Primary Education, while five marks are required to be deducted for each additional attempt when a student has passed the qualifying examination at more

than one attempt, if for any reason the student has not appeared at the qualifying examination, such non-appearance will not be considered as an attempt or a trial.

5. In view of the above instructions, which are taken on record, it is clear that the petitioner's non-appearance at the HSC Examination in March, 1999 cannot be held out against the petitioner nor can the petitioner be treated as having passed the HSC Examination at the second attempt. The petition is, therefore, required to be allowed and the respondent is required to be directed to consider the petitioner's case for admission to the PTC course on the basis that the petitioner has obtained 467 out of 700 marks i.e. 77.83% at the HSC (General Stream) Examination held in March, 2000.

6. The petition is accordingly allowed. The respondent is directed to consider the petitioner's case for admission to the PTC course on the basis that the petitioner has obtained 467 out of 700 marks i.e. 77.83% at the HSC (General Stream) Examination held in March, 2000, without deducting any marks. This shall be done within one week from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute with no order as to costs.
Direct Service is permitted.

(M.S. Shah, J.)
sundar/-